

EXHIBIT A: MDM DECLARATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,

Defendants.

No. 18 Civ. 2949 (ARR) (RER)

**DECLARATION OF MICHAEL D. MATTHEWS, JR. IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Michael D. Matthews, Jr., under penalty of perjury, declares as follows:

1. I am a partner of the law firm McDowell Hetherington LLP, attorneys for Defendants XOOM Energy, LLC and XOOM Energy New York, LLC. I submit this Declaration in support of Defendants' Motion for Summary Judgment.

2. The following exhibits attached hereto are true and correct copies of documents filed in *Mirkin v. XOOM Energy, LLC*, Case No. 18-3138 (2d Cir. 2019):

Exhibit A-1 Appellants' Opening Brief dated January 18, 2019

Exhibit A-2 Appellants' Reply Brief dated March 15, 2019

3. The following exhibits attached hereto are true and correct copies of expert reports served by the parties in this case:

Exhibit A-3 Expert Report of David C. Coleman dated October 31, 2022.

Exhibit A-4 Rebuttal Expert Report of David C. Coleman dated November 4, 2022.

Exhibit A-5 Expert Report of Derya Eryilmaz and Seabron Adamson dated October 3, 2022.

Exhibit A-6 Expert Rebuttal Report of Derya Eryilmaz and Seabron Adamson dated November 4, 2022.

4. The following exhibit attached hereto is a true and correct copy of relevant excerpts from the transcript of a motion to compel hearing in this case:

Exhibit A-7 Transcript of Civil Cause for Video Motion Hearing before The Honorable Ramon E. Reyes, Jr. dated August 27, 2020, ECF No. 75.

5. The following exhibits attached hereto are true and correct copies of relevant excerpts from the transcripts and exhibits of depositions taken in this case:

Exhibit A-8 Deposition of Boris Mirkin dated August 30, 2022.

Exhibit A-9 Deposition of Susanna Mirkin dated August 30, 2022.

Exhibit A-10 Deposition of Jason Loehde, individually, dated July 27, 2022.

Exhibit A-11 Deposition of XOOM Corporate Representative Jason Loehde dated July 28, 2022.

Exhibit A-12 Deposition of Ryan Park dated July 22, 2022.

Exhibit A-13 Deposition of Andrew Coppola dated May 11, 2022.

Exhibit A-14 Deposition of Thomas L. Ulry dated May 12, 2022.

Exhibit A-15 Deposition of Troy Chidester dated June 24, 2022.

Exhibit A-16 Deposition of Seabron Adamson dated November 8, 2022.

Exhibit A-17 Deposition of Dr. Derya Eryilmaz dated November 15, 2022.

Exhibit A-18 Exhibit 1 to the Deposition of Susanna Mirkin.

Exhibit A-19 Exhibit 5 to the Deposition of Susanna Mirkin.

Exhibit A-20 Exhibit 6 to the Deposition of Boris Mirkin.

6. **Exhibit A-21** is a true and correct copy of a data table generated by the U.S. Energy Information Administration that shows the “class of ownership, number of consumers, sales, revenue, and average price for power marketers and energy service providers by state” in the “residential sector” for 2013. *See* U.S. Energy Information Administration, 2013 Retail Power Marketers Sales - Residential (2013), *available at* https://www.eia.gov/electricity/sales_revenue_price/ (select “2013” on the drop down menu to download a zip file of data tables; then open the file named “table12.xls”).

7. **Exhibit A-22** is a chart that illustrates the 2013 average prices listed in Exhibit A-21 for XOOM and the twenty other providers with the largest customer counts in New York. The providers were identified by filtering “table12.xls” to only New York under the “State” column and sorting the data from highest to lowest under the “Customers (Count)” column. The resulting chart was created by using the data in the “Average Price (cents/kWh)” from highest average price to lowest average price. XOOM’s average price of 11.19 cents/kWh in 2013 is shaded in white with gray lines in the chart, and the average price of all 21 providers in 2013 is 10.81 cents/kWh (as reflected in the text box).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2023.

A handwritten signature in black ink, appearing to read "Michael D. Matthews, Jr.", written over a horizontal line.

Michael D. Matthews, Jr., Esq.